

ORDINANCE # 1904-2015

ORDINANCE ESTABLISHING A VETERAN'S SET ASIDE PROGRAM FOR QUALIFIED VETERAN'S BUSINESS ENTERPRISES

WHEREAS, pursuant to N.J.S.A. 40A:11-1 *et. seq.*, a municipality may establish a "Qualified Veteran Business Enterprise Program". N.J.S.A. 40A:11-42 *et. seq.*; and

WHEREAS, it is recognized within the State of New Jersey and Atlantic County that veterans have a high level of unemployment; and

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Galloway, County of Atlantic and State of New Jersey that a Qualified Veteran's Business Enterprise Program [QVBEP] is hereby established.

BE IT FURTHER ORDAINED, that the QVBEP will operate under the laws of the State of New Jersey and the following regulations and guidelines.

1. **NAME OF PROGRAM:** The name of the program shall be the Galloway Township Qualified Veteran's Business Enterprise Program.
2. **PURPOSE:** The purpose of the program shall be to set-aside of up to 1% of the dollar value of all purchases, services and construction contract annually issued by Galloway Township for Qualified Veterans as defined within.
3. **DEFINITIONS:**
 - a. **Veteran:** Pursuant to N.J.S.A. 40A:11-41 (h), "Veteran" shall have the same meaning as set forth in subsection b. of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of a record of service and receive a determination of status no later than the date established for the submission of bids.
 - b. **Qualified Veteran Business Enterprise:** Pursuant to N.J.S.A. 40A:11-41(i), "Qualified veteran business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by a veteran or that at least fifty percent of the required workforce for the contract are veterans, and at least 50% of the labor hours charged to the contract are accrued by employees who are veterans, including new hires if additional workers are required to perform the contract, and is qualified pursuant to section 25 of P.L.1971, c.198 (C.40A:11-25). The business shall also submit forms quarterly to the contracting agency showing proof of veteran status for all the veteran employees.

- c. **Total Procurement:** The “total procurement” shall include all purchases, contracts or acquisitions of the Township, whether by competitive bidding, single-source contracting, or other method of procurement, as prescribed or permitted by law. The total procurement shall be annually estimated based on the current year’s budget figures, including capital expenditures.
- d. **Responsible and Responsive Bidder:** Nothing in the Ordinance shall exempt a QVBE from the Local Public Contracts Law requirement of being a Responsive and responsible bidder or entity.

4. **REPORTING:**

- a. Save for the first year this Ordinance is in effect, the Manager shall prepare and submit a report for the Township Council by January 31 of each year describing the Township’s efforts in attaining the set-aside goals and the percentage of the dollar value of total procurements awarded pursuant to the QVBEP. The Township Council shall publish a list of the Township’s attainments in the immediately preceding local fiscal year in at least one newspaper circulating in the county or municipality, as appropriate, by March 1 of each year. N.J.S.A. 40A:11-48(8); and
- b. The QPA shall provide a quarterly report related to number and amount of contracts, goods, services issued and/or bid for the quarter, including the number of bidders or quotes and whether the contract, goods or services were contracted by a QVBE.

5. **TOWNSHIP RESPONSIBILITIES:**

- a. **QPA/Finance:** Ensure, through the certification procedure herein provided, that qualified businesses taking advantage of this set-aside program are legitimate VBEs.
- b. Maintain a listing of known VBE businesses in the proximate area for referral by the Township.
- c. Have access to all Township records and files which relate to construction, service and procurement contracts in order to monitor and review compliance.
- d. File, with the Manager, a quarterly report as delineated in 4 above.

6. **ELIGIBLE SET ASIDE CONTRACTS:**

- a. contract for goods, equipment, construction or services, which is designated as a contract for which bids are invited and accepted only from a qualified veteran business enterprise;
- b. A portion of a contract when that has been so designated; or
- c. Any other purchase or procurement so designated.

7. **CERTIFICATION OF QVBES:**

- a. To ensure that only qualified businesses which meet the veteran ownership or employment requirements set forth in N.J.S.A. 40A:11-41(i) in both form and substance are counted towards the goals' requirements set forth in this chapter, any veteran-owned business, including a joint venture, desiring to participate in the Township set-aside program must be certified by the Finance/Purchasing Department as a legitimate VBE.

- b. Any business wishing to be certified as a VBE business shall apply to the Finance/Purchasing Department for such certification and shall complete all forms and supply all documentation required by the Finance/Purchasing Department for such application.
- c. The Finance/Purchasing Department will evaluate the submitted information to determine whether the applicant meets the criteria for qualified veteran business enterprises. Prior to making a certification, the Finance/Purchasing Department may, in its discretion, request an interview with the applicant. Failure of an applicant to comply with requests for information or documentation may result in a determination of certification status based on the information supplied or a suspension of the application for certification.
- d. Following certification, the Finance/Purchasing Department may require the business to furnish additional information from time to time in order to establish its continued eligibility for certification.
- e. Upon becoming certified, a business shall immediately notify the Finance/Purchasing Department if there is a change in the business that affects its status as a VBE, including changes in ownership, percent of veterans on contract staffing, control or management.
- f. If a business is denied certification, the Finance/Purchasing Department shall notify the business, in writing (notice shall be sent by regular mail and return receipt requested to the address provided by the business), of the reasons for its determination. The business may appeal the denial to the Township Administrator or his designee, who shall conduct a hearing at which the business shall have the opportunity to present witnesses and documents in support of its application for certification. No appeals will be considered if filed later than 15 days from the date of the delivery or attempted delivery by the post office of the return receipt requested notice and/or 20 days after the date of the notice sent by regular mail. Businesses that are denied certification may not reapply for certification for a period of six months from the date of denial.
- g. The right of the Township to evaluate a bidder or contractor's ability to satisfy financial, technical or other criteria, separate and apart from the certification process provided for in this program, is not altered by this chapter.
- h. The certification granted pursuant to this section shall entitle a business to participate in any category of contract or procurement for which it qualifies. The certification shall not be considered contract or project specific. The Township may, but shall not be required to, delay the award of any contract pending the appeal of the Finance/Purchasing Department decision to deny certification.

8. DECERTIFICATION

- a. A VBE may be decertified for failure to meet the certification standards set forth within and for the following reasons:
 - (1) For providing false or misleading information to the Finance/Purchasing Department during the certification process.
 - (2) If the VBE is no longer an ongoing business entity.
 - (3) If the business entity has changed to the extent that it is no longer owned and controlled by veterans or does not employ a sufficient numbers of veterans pursuant to the requirements of this program.
 - (4) For failure to report to the Township, within 10 days, any determination of the federal government or any state government, municipality or school board, or any department, subdivision, agency or authority of the federal government or any state government, municipality or school board denying or revoking the certification of the business as a Veterans Business Enterprise.
 - (5) Upon review of the documentation concerning decertification, the Finance/Purchasing Department shall promptly decide the issue and notify the business of the decision in writing. The business may appeal the decision to the Township Manager or designee in accordance with the provisions of provided within. Reasons for decertifying a business shall be expressed by certified mail. The decertified business may not reapply for certification for a period of time to be determined by the Township Manager and/or designee, but in no event longer than a period of one year.
9. **RECERTIFICATION**: A certified VBE shall submit any information requested by the Finance/Purchasing Department annually to ascertain whether such business is still a qualified VBE pursuant to this program. If it is determined that the annual submission of information has changed to such an extent that the VBE status has changed, affecting the certified status, the Finance/Purchasing Department may recommend that the business be required to reapply for certification pursuant to this program.
10. **CERTIFICATION STANDARDS**: To determine whether a business shall be recommended by the Finance/Purchasing Department to be certified as a legitimate VBE, the following, in conjunction with information submitted by the applicant, shall be used:
- a. Eligible VBEs under this program shall be independent businesses. There shall be conclusive evidence that the ownership and control of such business is real, substantial and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The VBE owners shall enjoy the customary interests of ownership. They shall share in the risks and profits commensurate with their interest of ownership. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a VBE. To determine the legitimacy of an independent VBE, the Finance/Purchasing Department shall consider all relevant factors concerning ownership and control of business assets, including but not limited to the date the business was established, whether its resources for the work of the contract are adequate and the degree to which financial, equipment-leasing and other relationships with non-VBE firms vary from industry practice.

- b. The VBE's owners shall have the power to direct or cause management and policy directions of the firm/business as well as make major decisions on matters of management, policy and operations. The firm shall not be subject to any restrictions limiting the customary discretions of the veteran owners. This shall include provisions in bylaws, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the veteran owners, without the cooperation or vote of any owner who is not a veteran, from making a business decision of the firm.
- c. Where nonveteran owners of the firm are disproportionately responsible for the firm's operation, then, by the standards of this program, the firm is not controlled by veterans and shall not be considered a VBE business within the program's meaning on the basis of veteran ownership.
- d. In establishing a status of a legitimate VBE, all securities which constitute qualifying ownership and/or control of a corporation shall be held directly by veterans. Securities held in trust or by any guardian for a minor shall not be considered as held by a veteran in determining the ownership and/or control of a corporation.
- e. Capital or expertise contributed by veteran owners to acquire their interest in the firm shall be real and substantial. A promise to contribute capital, a note payable to the firm or its owners who are not veterans or the mere participation as an employee, rather than as a manager, shall be examples of insufficient contributions.
- f. In determining eligibility as a VBE, in addition to the above standards, the Finance/Purchasing Department shall give special consideration to the following circumstances:
 - (1) VBEs which are newly formed and whose ownership and/or control have changed since the date and/or time of the advertisement of the contract shall be closely monitored to determine the reasons and the relationship between the timing, formation and/or change in the firm.
 - (2) Careful scrutiny and review of previous and/or continuing employer/employee relationships between or among present owners shall be conducted to ensure that the employer/owner has the management responsibilities pursuant to this program.
 - (3) Any relationship between a VBE and a non-veteran-owned business having interest in the VBE shall be carefully monitored to determine if the interest of the VBE conflicts with the ownership and control requirements of this program.
 - (4) Joint ventures may be eligible to compete as VBEs under this program, provided that the VBE partner of the joint venture meets the eligibility standards of a VBE set forth herein and the VBE partner shares in the ownership, control and management responsibilities, the risks and profits of the joint venture, and the VBE partner is responsible for a clearly defined portion of the work to be performed.

11. **IMPLEMENTATION:** The implementation of Galloway Township's Qualified Veteran-owned Business Enterprise set-aside program shall:

- a. **Advertising:** The Township shall advertise the qualified veteran business enterprise set-aside program on its web site and Facebook page, and on the Township television station, in an attempt to identify qualified veteran business enterprises.
- b. **Identification of Contracts:** The Manager shall recommend to the Township Council a contract, subcontract or other means of procurement as a set-aside contract if it is likely to receive bids from at least two QVBEs at a fair, responsible and reasonable price. Set-aside designation shall be made prior to any advertisement for bids (if required). Notice of such designation shall be included in the advertisement not less than 10 days prior to the date fixed for receiving bids.
- c. **No QVEB Bidders:** If it is determined by the Finance/Purchasing Department that two bids cannot be obtained or that acceptance of the low responsible bid will result in the payment of an unreasonable price, the Finance/Purchasing Department may recommend to the Township Council that the bids be re-solicited on an unrestricted basis.
- d. **Designation of Set-Aside Contracts:** Upon recommendation from the Manager, designation(s) of contracts and/or subcontracts as set-aside contracts shall be made by the Township Council prior to advertisement, and notice of such designation shall be included in the advertisement.
- e. **Auditor:** The Township Auditor shall include in the audit a report at the end of each fiscal year identifying each contract awarded as a result of its Qualified Veteran Business Enterprise set-aside program.

12. **VIOLATIONS AND PENALTIES:** When the Township determines, after hearing, that a business has been classified as a VBE on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this Act, the Township may:

- a. Assess against the business any difference between the contract and what the Township's cost would have been if the contract had not been awarded in accordance with the provisions of this chapter.
- b. Assess against the business a penalty in an amount of not more than 10% of the amount of the contract involved.
- c. Bar the business from transacting business with the Township for a period of one year.

- d. Nothing contained herein shall preclude the violator from facing criminal sanctions for false swearing and other crimes that may be applicable under the New Jersey Criminal Code.

13. EFFECT ON OTHER PROVISIONS: If a Township contract, construction, service or procurement, which would otherwise be subject to the provisions of this chapter, is or becomes subject to federal or state laws which conflict with this program or actions thereof, federal or state law shall apply, and the contract shall be interpreted and enforced accordingly.

14. LOCAL PUBLIC CONTRACTS LAW AND NEW JERSEY STATE STATUTES: Nothing in this Ordinance shall exempt the QVBE from compliance with Local Public Contracts Law or New Jersey State Statutes nor the documentation requirements, certifications of particular bids.

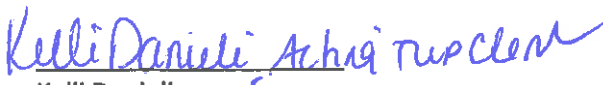
BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, this Ordinance shall take effect upon final adoption and approval in the time and manner as prescribed by law.

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed the first reading at a meeting of the Township Council, Township of Galloway, County of Atlantic, State of New Jersey, held on January 20, 2015 and said Ordinance will be further considered for final passage and adoption at a public hearing to be held at the Municipal Complex located at 300 East Jimmie Leeds Road, Galloway, New Jersey 08205 on February 10, 2015 at 6:30 P.M. or as soon thereafter as the matter may be reached.

**BY ORDER OF THE MUNICIPAL COUNCIL OF THE
TOWNSHIP OF GALLOWAY**


Kelli Danieli
Acting Twp Clerk

Recorded Vote:	MOTIONS	AYE	NAY	ABSTAIN	ABSENT
Coppola		X			
Gargione		X			
Gorman	2	X			
Maldonado	1	X			
Meadows					X
Tyrrell		X			
Purdy		X			